

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:07cv26**

<b>COMMSCOPE, INC. OF NORTH CAROLINA,</b>	)
	)
	)
<b>Plaintiff,</b>	)
	)
	)
<b>Vs.</b>	)
	)
	)
<b>HUBBELL INCORPORATED,</b>	)
	)
	)
<b>Defendant.</b>	)
	)

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**ORDER**

**THIS MATTER** is before the court on the consent Motion for Leave to File Amended Complaint (#29). In accordance with Rule 15, Federal Rules of Civil Procedure, plaintiff has shown good cause for the request and has properly secured the consent of defendant in making such motion. The court commends counsel for all parties in expediting resolution of this issue, which has in turn mooted defendant's Motion to Dismiss (#19) as a matter of law,<sup>1</sup> as well as eliminated the need for filing a Reply to the Counterclaim contained in the Answer.

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<sup>1</sup> Taylor v. Abate, 1995 WL 362488, \*2 (E.D.N.Y.1995) ("Defendants' motion to dismiss is addressed solely to the original complaint.... Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied."); In re Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 80 (D.Conn. 1994) (noting where "a plaintiff amends its complaint while a motion to dismiss is pending" the court may "deny[ ] the motion as moot"); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at \*1 n. 1 (D.Kan.1989) (holding that "motion to dismiss ... became moot when plaintiff filed an amended complaint"); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same).

## ORDER

**IT IS, THEREFORE, ORDERED** that the consent Motion for Leave to File Amended Complaint (#29) is **GRANTED**, plaintiff shall file such Amended Complaint within 10 days of receipt of this Order, the defendant's Motion to Dismiss (#19) is **DENIED** without prejudice, the Counterclaim is **STRICKEN** without prejudice, and defendant is allowed 10 days from the filing of the Amended Complaint to Answer.

Signed: June 25, 2007

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

